



# BIG TECH ACCOUNTABILITY PLATFORM

**TO:** Stakeholders and Interested Parties

**CC:** Energy and Commerce Committee Republican Members' Staff

**FROM:** Energy and Commerce Committee Republican Staff

**RE:** Staff Legislative Concepts

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## OVERVIEW

Earlier this year, Energy and Commerce Republican Leader Cathy McMorris Rodgers unveiled our “Big Tech Accountability Platform” as a framework to bring much-needed reform and oversight to Big Tech. As E&C Republican staff continue to engage stakeholders and interested parties, we want to make three things clear:

1. We will protect free speech: Republicans worked hard to repeal the Federal Communications Commission’s Fairness Doctrine and we will not advocate for a new one.
2. We will be mindful of small businesses and entrepreneurship: Any policy we pursue will balance these essential interests to preserve competition.
3. We will promote American tech leadership and innovation: We will continue to promote American global leadership while working to address issues here at home.

Resolving these complex issues will not be easy. We must embrace our conservative principles to find a viable solution consistent with the First Amendment that enables individuals to express themselves freely and protects the right of private companies to control their property.

Accordingly, this outreach is to start a considerate, inclusive, and transparent process as staff consider and develop legislation under our Platform. This initial outreach is to first focus on legislative concepts and then work with stakeholders and interested parties as we develop legislative text.

## STAFF LEGISLATIVE CONCEPTS

### Big Tech Companies

1. Target New Obligations to Big Tech Companies
  - a. Big Tech companies: As identified in the legislative concepts outlined below, Big Tech companies includes social media platforms, app stores, and other tech companies engaged in certain activities.
  - b. Threshold: Recognizing the need to target new obligations on dominant platforms, all legislative concepts outlined below apply exclusively to Big Tech companies with an annual revenue of \$1 billion.

## Content Policies and Section 230 Reform

2. Legislative Concept 1: Limit the Right of Exclusion
  - a. Define Big Tech companies as places of public accommodation and prohibit discrimination based on political affiliation and/or viewpoint.
  - b. Alternatively, define Big Tech companies as places of public accommodation and limit liability protections to content moderation processes that provide a measure of due process to users.
3. Legislative Concept 2: Require Reasonable Moderation Practices
  - a. Require Big Tech companies to implement and maintain reasonable moderation practices to address illegal drug sales; child exploitation, including child pornography and trafficking; targeted harassment or bullying of users under the age of 18; terrorism; counterfeit products and materials sales; and all other illegal content on their platforms.
  - b. Failure to implement and maintain such reasonable moderation practices is a violation of Section 5 of the Federal Trade Commission (FTC) Act.
  - c. Such companies may be liable for content decisions related to content included above but may assert liability protections if they implement and maintain reasonable moderation practices.
4. Legislative Concept 3: Limit Liability to Protected Speech
  - a. Modify Section 230 to only provide liability protection for moderation of speech that is not protected by the First Amendment or specifically listed in the statute.
5. Legislative Concept 4: Remove Liability Protections
  - a. Remove liability protection under Section 230 for content moderation decisions made by Big Tech companies that discriminate based on political affiliation or viewpoint.
6. Legislative Concept 5: Require Appeals Processes
  - a. Require Big Tech companies to implement and maintain reasonable and user-friendly appeals processes for users to challenge content moderation decisions on constitutionally protected speech as well as decisions about suspending or deplatforming users. The appeals process must clearly explain the company's content moderation policies and identify the specific provision(s) the content or user violated and why.
7. Legislative Concept 6: Carve Out Big Tech Companies from Section 230
  - a. Carve out Big Tech companies and/or only those that are specifically engaged in certain activities, such as hosting social media platforms and app stores, from

Section 230 liability protections while retaining current liability protections for all new entrants and small companies.

- b. Repeal Section 230 protections for companies engaged in targeted behavioral advertising.
8. Legislative Concept 7: Reauthorization of Section 230
- a. Require a reoccurring five-year reauthorization of Section 230 for Big Tech companies to condition the proper use of such protections and allow for adjustments as changes to industry develop.

### Transparency Requirements

9. Legislative Concept 1: Content Policies, Processes for Content Decisions, and Appeals Processes
- a. Require Big Tech companies to submit a detailed description of their content management policies to the FTC that include the development of such policies, any changes to such policies, the processes for making content decisions, and a clear and timely appeals process for challenging content that is flagged, removed, or altered.
  - b. Require Big Tech companies to submit quarterly filings to the FTC that disclose their content policy enforcement decisions.
  - c. The FTC must publish the disclosed content management policies provided by the company, unless the company claims the filed information to be privileged and confidential. If any information is deemed privileged and confidential, it shall be withheld, but the FTC shall disclose the category of information withheld and the reasoning for withholding it.
  - d. Failure to file such transparency policies and requirements is a violation of Section 5 of the FTC Act.
  - e. Empower the FTC, in coordination with State Attorneys General, to take civil action when protections have been violated.

### Protecting Children Online

10. Legislative Concept 1: Expand the Child Online Privacy Protection Act (COPPA)
- a. Expand COPPA to focus the FTC where protections for teens and younger children have been compromised.
  - b. Require Big Tech companies to report on what kind of advertising they are conducting on this age group, how they have authenticated the material on the platform, including how user's ages have been verified, whether the content is user-generated by this age-group, and what research has been conducted to establish protocols for the delivery of content to this age group.

## 11. Legislative Concept 2: Children's Mental Health<sup>1</sup>

- a. Require Big Tech companies to track trends on their product's impact on children's mental health, including degraded self-worth, self-harm, targeted harassment of children and cyberbullying and any offline harm resulting from such bullying.
- b. Direct relevant federal agencies to work with Big Tech and other interested parties to develop an educational campaign about the risks Big Tech poses to children's mental health and well-being.

### Law Enforcement

## 12. Legislative Concept 1: Law Enforcement Collaboration

- a. Require Big Tech companies to collaborate with law enforcement to educate the public on what recourses the public has when their safety and security has been violated.
- b. Require such companies to have protocols in place to assist law enforcement to protect individuals from harm in a timely fashion.
- c. Require such companies to cooperate with law enforcement to target perpetrators that promote, post, or otherwise engage in the distribution of illegal drug sales; child exploitation, including child pornography and trafficking; targeted harassment or bullying of users under the age of 18; terrorism; counterfeit products and materials sales; and all other illegal content.
- d. Require such companies to report on their efforts to cooperate with law enforcement.
- e. FTC will consult with local, state, and other federal authorities on the level of cooperation that the companies have provided law enforcement.

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<sup>1</sup> Note: staff will continue to explore options to address this issue as we gather more information from Big Tech on their own research on the impact of their products on children's mental health.